

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN PENROD, GUS ERPENBACH,
and JUAN WELSH, individually and on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

K&N ENGINEERING, INC.,

Defendant.

Court File No.: 18-cv-02907-ECT-LIB

**DECLARATION OF STEVE
WILLIAMS IN SUPPORT OF
MOTION TO DISMISS**

I, Steve Williams, declare as follows:

1. I am currently employed by K&N Engineering, Inc. as its Chief Engineering Officer. I began working for K&N in 1995 and was promoted to my current position in 2014. Since very early in my career at K&N, I have had involvement with its entire line of oil filters, including powersports oil filters, which encompass motorcycles, personal watercraft (PWC) such as jet skis, and off-road or all-terrain vehicles (ATVs). I have personal knowledge of the facts set forth in this declaration and, if called upon to testify, I could and would testify competently as to these facts under oath.

2. K&N does not manufacture oil filters and never has manufactured oil filters. Instead, K&N contracts with third-party manufacturers to manufacture oil filters for K&N. These filters that are then marketed and sold by K&N under the “K&N” brand.

3. Since approximately 2003, I have been involved in or overseen the development of the express warranties on K&N’s various products and their publication on K&N’s website. During the time frame that the plaintiffs in this case have alleged they purchased KN-204 oil filters (*i.e.*, April 2017 through June 2017), K&N’s express warranty language covering all K&N oil filters stated:

“K&N Oil Filter Warranty

K&N oil filters are warranted to be free from defects in material and workmanship. Any filter proven defective during the engine or equipment manufacturer’s or during the oil supplier’s recommended service intervals will be replaced at no charge.

In the event of an engine or equipment failure directly caused by a defective K&N oil filter, which was properly installed and changed following the engine or equipment manufacturer’s recommended service intervals, K&N Engineering, Inc. will repair the damaged engine or equipment. If a full synthetic or other premium

lubricant is used K&N will extend this coverage to the interval specified by the lubricant supplier.

Claims for engine or equipment repairs provided under this warranty must be submitted within 30 days after discovery of damage. K&N Engineering, Inc. reserves the right to examine the engine or equipment and filter to determine the amount of damage and whether it was caused by a defective K&N oil filter.

This warranty gives you specific legal rights. You may have other rights which vary from state to state.

Engine and equipment manufacturer's warranties remain in effect when K&N oil filters are used.

What is Not Covered By Our Warranty

Any K&N product used for 1: any type of racing or competition; 2: any off-road use, custom or modified applications; 3: any off-road or dual sport motorcycle/ATV use; or 4: any illegal highway use, marine, or industrial applications."

4. In or about January 2018, I approved a change to K&N's express warranty covering K&N oil filters that replaced the foregoing language on K&N's website. Attached as **Exhibit A** is a true and correct copy of K&N's Limited Warranty applicable to all K&N oil filters purchased since the date that this change was implemented.

5. The packaging of each filter identified in the complaint in this lawsuit specified that the product was subject to K&N's Limited Warranty. At all relevant times, the full warranty terms were set forth on K&N's website.

6. I was involved with and oversaw the voluntary recall that K&N initiated in August 2017, which included reviewing and approving the various Part 573 Safety Recall Reports K&N filed with the National Highway Traffic Safety Administration (NHTSA) in conjunction with the recall. Attached as **Exhibit B** is a true and correct copy of the

revised Part 573 Safety Recall Report, dated November 30, 2017, submitted by K&N for the recalled KN-204 oil filters. This is the most current Safety Recall Report submitted.

7. Since November 30, 2017, K&N has received 43 claims of reported failures of the KN-204 oil filter, bringing the total number of defective filters identified through the recall of that product to approximately 128 oil filters.

8. Attached as **Exhibit C** is a true and correct copy of the page from NHTSA's Equipment Manufacturer's portal wherein K&N submitted on January 7, 2019 its Quarterly Report on the KN-204 recall for the fourth quarter of 2018. This document also reflects a summary of information for all prior reporting periods through December 31, 2018. The reported numbers are cumulative. In other words, each quarterly report includes the numbers reported in the preceding quarterly report. This document reflects information in the fifth quarterly report submitted to NHTSA by K&N since it began submitting reports in the fourth quarter of 2017. This report reflects that the total number of recalled oil filters returned to K&N by consumers, dealers and distributors through the fourth quarter of 2018 was 12,990 oil filters. The total number of recalled filters returned to K&N in each quarter was 5,156 filters in the fourth quarter of 2017, 5,930 filters in the first quarter of 2018, 1,308 filters in the second quarter of 2018, 436 filters in the third quarter of 2018, and 160 filters in the fourth quarter of 2018. Due to the recent submission of the report reflected in Exhibit C, it is not yet available on NHTSA's public access recall portal at <https://www.nhtsa.gov/equipment-detail/K%252526N/POWERSPORTS%252520OIL%252520FILTER/116895#recalls>.

9. Attached as **Exhibit D** is a true and correct copy of the most recent Recall Quarterly Report available to the public on NHTSA's website summarizing each of the previous four quarterly reports submitted K&N on the KN-204 recall as of October 26, 2018.

10. For January 2019 to date, 41 recalled filters have been returned to K&N from a dealer's inventory pursuant to the recall, which means they never reached consumers.

11. The KN-204 oil filter is the only K&N oil filter subject to a recall. No other oil filters manufactured for K&N have been recalled and we are not aware of any facts that would warrant a recall of any other oil filters.

12. I estimate that, over the past five years, K&N has sold directly to consumers, dealers and distributors approximately 800,000 powersports (*i.e.*, motorcycles, personal watercraft and all-terrain vehicles) oil filters annually in the United States. I estimate that, of that amount, approximately 220,000 were the KN-204 oil filter. Retail prices from resellers of KN-204 oil filters range from \$10 to \$16 per filter. K&N's website, at <https://www.knfilters.com/oil-filters/kn-204-oil-filter?pkid=6286298&rw=1>, reflects a purchase price of \$15.99 for KN-204 oil filters.

13. Motorcycle oil filters are generally used for between 6 to 12 months, or 4,000 to 10,000 miles, whichever occurs first, before being removed and discarded during oil changes as part of routine motorcycle engine maintenance. For the vast majority of the KN-204 oil filters, the filters were purchased, used and discarded without any failure

reported to K&N.

14. The KN-204 is a powersports filter that fits motorcycles and non-motorcycle applications, including personal watercraft and off-road or all-terrain vehicles. A NHTSA recall only applies to vehicles intended for use on a highway, such as motorcycles. K&N recalled all 134,674 KN-204 filters sold in the United States regardless of their intended use.

15. K&N has never refused to pay a documented warranty claim relating to any defective K&N powersports oil filter, including the KN-204. To the extent that a purchaser's KN-204 filter manifested a defect and that individual submitted a recall or warranty claim with supporting information showing that a K&N oil filter was actually purchased (such as receipts, repair estimates or photos), that claim was paid and any possible loss was remedied no matter when the purchase was made and no matter when the claim was submitted.

16. K&N paid or has caused to be paid all warranty claims presented to K&N except for 24 claims as to which consumers failed to supply K&N with the information and documentation necessary to evaluate and process those claims. For each of those claims, K&N communicated with the consumer and requested the necessary information and documentation to process their claims but it was not provided the requested information.

I declare under penalty of perjury under the laws of the State of Minnesota that the foregoing is true and correct.

Executed in Riverside, California on this 18th day of January 2019.



Steve Williams